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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/633,951 | 08/04/2003 | William F. Frame | OSA-213473 | 5195 |

40947 7590 12/13/2004

STUART RUDOLER LLC
ATTN: DOCKET CLERK
2 BALA PLAZA, SUITE 300
BALA CYNWYD, PA 19004

EXAMINER

LEV, BRUCE ALLEN

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3634

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,951

Applicant(s)

FRAME ET AL.

Examiner

Bruce A. Lev

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

BRUCE A. LEV
PRIMARY EXAMINER

DETAILED ACTION

Claim Rejections - 35 USC § 103

Claims 1-16 and 18-22 are rejected under 35 U.S.C. ***103(a)*** as being unpatentable over ***Guerette 4,044,857 in view of Laug 6,1 89,653***.

Guerette sets forth a foldable stairway ladder comprising a stairway section, a platform (viewed as an upper portion of the ladder along with the top horizontal portion of the ladder; a support (inclusive of member 16) rotatably connected to the platform (and forming a slope between 48 and 60 degrees); a manually actuatable folding system/mechanism/hinge (inclusive of the hinged pivoting members); a pair of spreaders 12 between the stairway and the support', handrails 18 having a plurality of arms capable of two positions including deployed and collapsed positions; caster wheels 13 and 15., stopping mechanism (inclusive of members 26); and the method of increasing space around the ladder when not in use. ***What Guerette does not set forth*** is the support sections being telescopically extendible and adjustable in length. However, ***Laug teaches*** the use of support sections 1 and 2 being telescopically extendible. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the support sections of Guerette by forming them as being telescopically extendible and adjustable in length, as taught by Laug, in order to adjust the height, length, and angles of the ladder to be accommodated upon different shaped and sized support surfaces.

Claims 1-16 and 18-22 are rejected under 35 U.S.C. **103(a)** as being unpatentable over **Willett in view of Laug**.

Willett sets forth a foldable stairway ladder comprising a stairway section, a platform 29; a support (inclusive of member 17) rotatably connected to the platform (and forming a slope between 48 and 60 degrees); a manually actuable folding system/mechanism/hinge (inclusive of the hinged pivoting members); a pair of spreaders (inclusive of members 27 and 28) between the stairway and the support; handrails 35 having arms capable of two positions including deployed and collapsed positions; caster wheels 47; stopping mechanism (inclusive of members 54); and the method of increasing space around the ladder when not in use. **What Willett does not set forth** is the support sections being telescopically extendible and adjustable in length. However, **Laug teaches** the use of support sections 1 and 2 being telescopically extendible. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the support sections of Guerette by forming them as being telescopically extendible and adjustable in length, as taught by Laug, in order to adjust the height, length, and angles of the ladder to be accommodated upon different shaped and sized support surfaces.

Claim 17 is rejected under 35 U.S.C. **103(a)** as being unpatentable over **Guerette in view of Laug further in view of Swiderski 5,791,434**.

Guerette in view of Laug set forth the ladder, as advanced above, except for the use of steel and aluminum materials. However, **Swiderski teaches** the use of steel

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and aluminum materials within a folding ladder configuration. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ladder of Guerette in view of Laug by incorporating steel and aluminum materials, as taught by Swiderski, in order to reduce the weight and increase the strength of the apparatus.

Claim 17 is rejected under 35 U.S.C. ***103(a)*** as being unpatentable over ***Willett in view of Laug further in view of Swiderski 5,791,434.***

Willett in view of Laug set forth the ladder, as advanced above, except for the use of steel and aluminum materials. However, ***Swiderski teaches*** the use of steel and aluminum materials within a folding ladder configuration. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ladder of Willett in view of Laug by incorporating steel and aluminum materials, as taught by Swiderski, in order to reduce the weight and increase the strength of the apparatus.

Conclusion

Remarks filed November 15, 2004 have been considered but have not been persuasive.

As concerns remarks pertaining to the combinations using Laug, the examiner takes the position that the reason for forming the support sections 1 and 2 as being telescopically extendible is to accommodate different shaped and sized support

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surfaces. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the support sections of Guerette and Willett by forming them as being telescopically extendible and adjustable in length in order to adjust the height, length, and angles of the respective ladders to thereby be accommodated upon different shaped and sized support surfaces. Further, the "use" of an element (or function) is not a means of persuasion for patentability when the mechanical limitations are met by the prior art and "can be" used for the same function(s).

Applicant's amendment, including "adjustable length" (i.e., in claims 1 and 11), necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

December 8, 2004

A handwritten signature in black ink, appearing to read 'B. Lev', with a large, stylized initial 'B'.

Bruce A. Lev

Primary Examiner

Group 3600